

STATE OF MICHIGAN  
COURT OF APPEALS

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ARIEL PEREZ, SR., Personal Representative of  
the Estate of Ariel E. Perez, Jr., Deceased,

UNPUBLISHED  
March 27, 2007

Plaintiff-Appellee/Cross-Appellant,

v

No. 271406  
Oakland Circuit Court  
LC No. 2005-065925-NM

OAKLAND COUNTY, a Michigan Municipal  
Corporation, and ROBERTA RICE,

Defendants-Appellants/Cross-  
Appellees,

and

DR. SARATH HEMACHANDRA,

Defendant.

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Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

FITZGERALD, J. (*concurring*.)

I concur because I am obligated by *Cooper v Washtenaw Co*, 270 Mich App 506; 715 NW2d 908 (2006) to do so.<sup>1</sup> However, I believe that genuine issues of material exist as to whether defendants' alleged gross negligence was the proximate cause of the suicide of the decedent.

Plaintiff's decedent was placed in the Oakland County Jail for a probation violation. He had previously attempted suicide in the jail, made suicidal statements in the jail, and had been on active suicide watch due to his mental illness. Within thirteen hours of his arrival at the jail on October 24, 2002, he attempted suicide by hanging. The decedent was placed on suicide watch until October 28, whereafter he was housed in a multiple person cell. On November 13, 2002,

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<sup>1</sup> The Supreme Court denied the application for leave to appeal in *Cooper*. However, I continue to believe that *Cooper's* holding that the conduct of a governmental actor cannot be the proximate cause of death of an inmate who commits suicide is erroneous.

defendant Rice cleared plaintiff's decedent for single-call housing without any special watch. The decedent attempted suicide by hanging on November 22 and died a few days later.

These undisputed facts could lead a reasonable jury to conclude that defendants were grossly negligent. In *Cooper, supra*, a case involving similar facts, Judge Cooper, in her dissenting opinion, opined that "the alleged gross negligence may be the most direct cause of [the] decedent's suicide if his actions were sufficiently foreseeable to fail as superseding causes or, alternatively, if his instability precluded competent volitional action." *Id.* at 513. She noted that:

The facts of this case clearly suggest decedent's final acts were foreseeable. As such, they are arguably not intervening and superseding causes, and do not relieve defendants of liability for their alleged gross negligence. Critical to the determination of this and like cases by summary disposition, whether an intervening act of negligence is a superseding proximate cause is a question for the jury. [*Id.* at 514.]

Judge Cooper concluded in her dissenting opinion in *Cooper* that genuine issues of material fact remained concerning whether the defendants' alleged gross negligence in failing to monitor a prisoner they knew to be suicidal was the proximate cause of the decedent's death and whether the decedent's actions constituted an intervening and superseding cause.

I concur with Judge Cooper's analysis in her dissenting opinion in *Cooper* and would hold that, in light of the evidence that the decedent's suicide was foreseeable, questions of material fact exist for the trier of fact. I would affirm.

/s/ E. Thomas Fitzgerald